



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20541

B-177152

June 6, 1973

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C. I. Whitten Transfer Co.  
P. O. Box 1833  
Huntington, West Virginia 25719

Attention: L. D. Puffenberger  
Traffic Manager

Gentlemen:

Reference is made to your letter of September 28, 1972, with enclosures, requesting review of our settlement certificate of June 23, 1972, which disallowed your claim (our No. TK-945534) for \$16.64 on bill No. 6429-A for additional freight charges. The claim relates to a shipment of Government property transported from Fort Estill, Kentucky, to Dover Air Force Base, Delaware, under Government bill of lading (GDL) F-3350172, dated June 3, 1970.

Review is sought on the basis of a letter from the Bureau of Operations, Interstate Commerce Commission, dated February 18, 1972, which indicates the belief that bomb fins and bodies cannot be considered to be blasting supplies. The letter further indicates the possibility that the term "explosives" would include such bomb parts, depending upon the particular circumstances surrounding each individual shipment. You therefore contend that the bomb fins were properly rated as explosives.

The shipment in question consisted of 11,911 pounds of articles (including dunnage and pallet weight) described in the bill of lading as "AMMUNITION ITEMS." Such articles consisted of inert bomb fin assemblies, fuze bomb tails, fuze bomb noses, and detonating fuzes. The face of the bill of lading, in the space provided for a showing of tariff or special rate authorities, indicates that the shipment was tendered subject to the provisions of C. I. Whitten Transfer Co. Tender I.C.C. No. 300. However, that tender applies only on shipments of "Ammunition and/or Explosives and/or Fireworks" and thus would be inapplicable to a mixed shipment of explosives and projectile parts (bomb fins).

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The informal comments which you have received from the Bureau of Operations are of a general nature and are not controlling on the disposition of related problems treated in formal proceedings. But we will consider the implications of those comments as related to this case. We agree with the premise that bomb fins are not blasting supplies. As stated in our decision B-170792, November 15, 1971--

The term "supplies" has a very broad meaning and is distinguished from "materials" or "ingredients." It embraces those things furnished for the purpose of operation, as distinguished from "materials," which are furnished for original construction. Mutrie Motor Transportation, Inc. v. Blue Line Express, 53 M.C.C. 530 (1951); Carroll Trucking Co., Interpretation of Certificate, 52 M.C.C. 178 (1950). The term "supplies" means those things consumed in, or necessary to, the maintenance and operation of a plant, factory, or business other than the raw materials or ingredients which go into the finished product. Ball Motor Freight, Inc., Extension-Aluminum Foil, 67 M.C.C. 544 (1956); St. Mary's Trucking Co., Inc., Extension-Michigan, 82 M.C.C. 502 (1960). They do not form part of the completed product and are articles furnished for the purpose of operation, such as wrapping paper or returnable skids, or forms, hoists and gasoline used by a contractor. Johnson Truck Service v. Salvino, 61 M.C.C. 329, 333 (1952) reversed on other grounds in Salvino v. United States, 119 F. Supp. 277 (1954); Builders Express, Inc., Interpretation of Certificate, 51 M.C.C. 103, 107 (1949). Supplies are such things as are intended to be used and consumed in the progress of the work. Grifall Common Carrier Application, 62 M.C.C. 763, 765 (1954); Dart Transit Co.-Investigation of Operations, 54 M.C.C. 429, 437 (1952) affirmed Dart Transit Co. v. Interstate Commerce Commission, 110 F. Supp. 876 (1953), affirmed 345 U.S. 980 (1953).

It seems to us, that a bomb fin would be better described as "material" than as an item of "supply." Such fins apparently do not meet many of the tests for classifying an item as a "supply," since fins form a part of the completed product and are not items furnished for the purpose of operation or maintenance as used by a contractor.

However, if bomb fins are not blasting supplies, it does not necessarily follow that they can be termed explosives or ammunition, so as to be ratable under Whitten Tender I.C.O. No. 300. The Bureau of Operations letter of February 18 states in part—

It is possible, however, that the term explosives would include these bomb parts and instruments. Bombs and other ammunition, \* \* \*, have been considered within "explosives" authority when they contain explosives. The general rule is that where a carrier has authority to transport a commodity, this includes parts of that commodity which are moving in connection with it and at the same time. However, independent shipments of parts for stock, or shipments consisting entirely of pieces or ingredients to be assembled at destination into bombs or other ammunition are not within "explosives" authority.

This rationale was discussed in East Texas Motor Freight Lines-Interpretation of Certificate, 62 M.C.C. 727 (1954), wherein it was stated at page 728 that,

\* \* \* the general rule has been that authority to transport a specified commodity is not authority to transport unassembled parts or ingredients thereof. This rule is particularly valid where, as here, the authorized commodity "ammunition" has a large variety of forms and sizes and where the parts when transported are not in the nature of accessories intended for installation on a specific larger unit which is also being transported at the same time, but, rather, are themselves a subdivision of the larger unit in an unassembled state. A grant of authority to transport "ammunition" cannot be construed as authority to transport also ingredients, or component parts of ammunition, or incomplete unassembled units intended for incorporation or assembly at a proper time and place into a unit of ammunition.

Under this rationale bomb fins would not be classifiable as "ammunition," since they were not being transported as an accessory

to a larger unit, also being transported at the same time. Thus, the transportation of an ingredient or component part (the bomb fins), not being shipped with articles describable as "ammunition," does not come within Whitten's authority to transport "ammunition" so as to make applicable the terms of Tender I.C.C. No. 300.

Further, the bomb fins could only be termed explosives if they met one of two conditions: (1) they, in and of themselves, had an explosive capacity or (2) they were transported with other components which when assembled would comprise a complete bomb. The record does not indicate whether the bomb fin assemblies had any explosive capacity of their own, and the bill of lading shows that only some components of a bomb were being transported, not an entire, unassembled bomb. Therefore, it is our view that the bomb fin assemblies would not fall within the classification of "explosives."

Since the bomb fins were neither blasting supplies nor ammunition or explosives, the items shipped would not be embraced within the commodity description of Tender I.C.C. No. 300 and the rates provided therein would not be applicable to the shipment. However, the service has been performed and the benefit of the service has been received. Consequently, under the principles of quantum meruit, the carrier is entitled to a reasonable compensation. See National Carloading Corp. v. United States, 64 F. Supp. 150 (1946); Berger v. Dynamic Imports, Inc., 274 N.Y.S. 2d 537 (1966); Cities Service Oil Co. v. Erie R. Co., 237 I.C.C. 387, 389 (1940); Bromley v. Southern Ry., 192 I.C.C. 119, 121 (1933); and Stein Potato Co. v. Northern Pacific Ry. Co., 144 I.C.C. 123, 124 (1928). Since Whitten's tariff rates, as contained in MF-I.C.C. No. 64, apply to COMPONENT PARTS OF EXPLOSIVES, there would seem to be no valid reason why such rates should not be used in computing the measure of the quantum meruit charges due for this mixed-truckload shipment.

The settlement disallowing your claim was consistent with that view, and, accordingly, it is sustained.

Sincerely yours,

Paul G. Denbling

For the Comptroller General  
of the United States